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Ms. Magalie R. Salas
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
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**Ex Parte: Implementation of the Local Competition Provisions in the
Telecommunications Act of 1996 – CC Docket No. 96-98**

Dear Ms. Salas:

This is in response to an *ex parte* presentation submitted on July 27, 2001, by counsel for Nextel Communications, Inc. and VoiceStream Wireless Corporation ("CMRS Providers") regarding provision of certain unbundled network elements ("UNEs") to CMRS providers. The CMRS Providers claim that local exchange carriers are obligated under section 251(c) of the 1996 Act to provide them with unbundled dedicated transport rather than special access services between their Mobile Switching Centers ("MSCs") and their base stations or cell sites. In particular, they contend that their cell sites are equivalent to end office switches, and that the Commission has already determined that they are impaired without access to such UNEs. They are wrong.¹

The 1996 Act specifies that incumbent local exchange carriers must provide requesting telecommunications carriers with interconnection at any technically feasible point and offer unbundled access to network elements based on a Commission determination, *inter alia*, that the failure to provide such access "would impair the ability of the telecommunications carrier seeking access to provide the services that it seeks to offer." 47 U.S.C. § 251(d)(2)(B). See also, 47 U.S.C. § 251(c)(3).

Here, the CMRS Providers are requesting dedicated DS1 and DS3 transport facilities to connect their MSCs to their cell sites (base stations). Insofar as is relevant here, the Commission's rules require incumbents to provide such unbundled dedicated transport facilities only between wire centers or switches owned by the requesting carriers. See 47 C.F.R. § 51.319(d)(1)(i). As a result, incumbents would need to provide unbundled dedicated transport only if the MSC and the cell site both were switches or wire centers owned by the requesting CMRS providers.² But they

¹ Verizon does not contest the CMRS Providers' claim that they are "requesting telecommunications carriers" and are entitled to UNEs where they meet the statutory and Commission criteria.

² Even in those instances, the incumbents would not be required to construct new facilities between the CMRS providers' switches if adequate facilities were not already in place.

are not – while the MSC is unquestionably a switch, cell sites do not meet the Commission's own definition of either a switch or a wire center.³

The applicable Commission rule describes the relevant switching functions as:

The basic switching function of connecting lines to lines, lines to trunks, trunks to lines, and trunks to trunks, as well as the same basic capabilities made available to the incumbent LEC's customers, such as a telephone number, white page listing and dial tone.

47 C.F.R. § 51.319(c)(1)(iii)(A).

Cell sites do not perform any of these functions. A cell site does not serve a designated set of end users among whom calls are switched and, therefore, does not connect lines or trunks to each other or provide telephone numbers, white pages listings, or dial tone. Nor is it used to connect (*i.e.*, switch) subscriber loops to the incumbent's switch for routing. Instead, the cell site acts as a transmitter/receiver that must communicate with the MSC for location information and switching functions. An individual hand set "registers" with the nearest cell site when it is turned on, and a call in progress is "served" by that cell site only for the length of time that the hand set is within range of that site, based upon instructions the cell site receives from the MSC. As the hand set moves, the call is handed off to one or more cell sites, as instructed by the MSC, and each such cell site must remain in communication with the MSC in order to receive handoff and other instructions that allow the connections to be maintained. Furthermore, a call from one cellular handset to another cellular handset being handled by the same cell site must transit the MSC. Thus it is the MSC and not the cell site that is providing the switching functionality. Simply put, a cell site does not connect calls and therefore cannot be considered equivalent to a switch.

Similarly, the Commission defines a wire center as "the location of a local switching facility containing one or more central offices." 47 C.F.R. § 54.5. As shown above, the cell site is not a switch, and, therefore, it cannot meet this definition of a wire center.

Standard industry practice supports this definition. The Local Exchange Routing Guide, or LERG, which lists all end offices and wire centers in the United States and which local exchange carriers use in their network design and implementation, shows the MSCs as the local switches for routing purposes. It does not list local cell sites or base stations as local switches, because they do not provide end office switching functions. Likewise, the LERG does not list cell sites in its list of wire centers.

Because cell sites are clearly not switches or wire centers, and therefore do not qualify to terminate a UNE under section 51.319(d)(1)(i), the CMRS Providers use verbal gymnastics to support their claim that they are "equivalent" to end office switches. First, they cite the Commission's order in *TRS Wireless, LLC v. US WEST Communications*, 15 FCC Rcd 11166, && 22-23 (2000). There, the Commission found that paging terminals and the network perform routing

³ As shown below, the CMRS Providers could convert special access services to unbundled transport elements if they meet the "safe harbor" criteria the Commission has established – criteria which the CMRS Providers do not claim to have met.

or switching and termination functions akin to an end office switch. However, what the CMRS Providers fail to state is that it is the MSC, not the cell site, that provides the equivalent switching functions in the cellular network.⁴ Therefore, the *TRS Wireless* Order does not support the CMRS Providers' claim.

Likewise, their reliance on the *CMRS First Report* is misplaced. See *Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services, First Report*, 10 FCC Rcd 8844 (1995). As that report makes clear, it is the MSC (which in the report is called the Mobile Telephone Switching Office), not the cell site or base station, that performs equivalent functions to a wireline carrier's end office by determining "if the call was placed by a valid subscriber, which base stations will handle the call, and on which of several radio channels the telephone call should be handled." *Id.* at ¶ 18. The end office-like functions are performed at the MSC, and the cell site simply broadcasts the needed information to the hand set and transmits the call.

As a result, there can be no question that the cell site neither performs switching functions nor other functions that are equivalent to an end office switch or a paging terminal, as the CMRS Providers claim. Therefore, their request for UNEs is not consistent with section 51.319 of the Commission's rules.

The next question, then, is whether the Commission should change the rules to specify a new UNE for CMRS providers to connect their MSCs with their cell sites. That would take a new rulemaking, and the Commission would need to find that the CMRS Providers are impaired in their ability to provide their wireless services without the use of UNEs, as required under the Act. See 47 U.S.C. § 251(d)(2)(B). Such a finding is highly unlikely, because they do not rely on UNEs today and, as the Commission has recently found, the CMRS segment of the telecommunications industry is highly robust and successful and is characterized by intense competition,

In the twelve months ending December 2000, the mobile telephony sector generated over \$52.5 billion in revenues, increased subscribership from 86.0 million to 109.5 million, and produced a nationwide penetration rate of roughly 39 percent. We note that 39 percent represents an overall average and provides no information on segment-specific growth rates or market penetration by demographic variables (e.g., penetration rates in rural vs. urban areas). Broadband PCS carriers and digital SMR providers continue to deploy their networks. To date, 259 million people, or almost 91 percent of the total U.S. population, have access to three or more different operators (cellular, broadband PCS, and/or digital SMR providers) offering mobile telephone service in the counties in which they live. Over 214 million people, or 75 percent of the U.S. population, live in areas with five or more mobile telephone operators competing to offer service. And 133 million people, or 47 percent of the population, can choose from at least six different mobile telephone operators.

⁴ The analogy is not exact, because of the differences in the two networks. A paging network receives a call and broadcasts it from all paging transmitters. A cellular network uses switch intelligence in the MSC to set up a communications path based upon the location of the hand set.

Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services, Sixth Report, FCC 01-192 at 5-6 (rel. July 17, 2001) (footnotes omitted).

In addition, the same functions that the unbundled transport facilities would perform are currently performed by special access services. These services are highly competitive, with competing local exchange carriers serving 36% of the market. *Competition for Special Access Service, High-Capacity Loops, and Interoffice Transport*, at 6, Table 3, filed as Attachment B to Joint Petition of BellSouth, SBC and Verizon for Elimination of Mandatory Unbundling of High Capacity Loops and Dedicated Transport, CC Docket No. 96-98 (Apr. 5, 2001). Moreover, approximately 80% of the special access services still served by incumbent local exchange carriers qualify for pricing flexibility based on the Commission's own standards for evaluating competition. *Id.* at 7, Table 4.

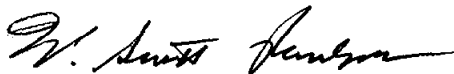
The CMRS Providers claim, however, that the Commission has already made the needed impairment finding, citing the *UNE Remand Order*, 15 FCC Rcd 3696, && 51 *et seq.* (1999). However, as discussed above, the rules adopted in that order do not extend to the CMRS Providers' request here. Therefore, the Commission would need to undertake a new impairment analysis, and, as discussed, a finding of impairment could not be made.

Nor have the CMRS Providers shown that they are eligible to convert existing special access services to UNEs. Under the "safe harbor" criteria that the Commission has established for such conversion, non-collocated carriers must certify that at least 50 percent of the activated channels on a circuit are used to provide local dial tone service, that at least 50 percent of the traffic on each of those channels is local voice traffic, and that the entire loop has at least 33 percent local voice traffic.⁵ *Supplemental Order Clarification*, 15 FCC Rcd 9587, & 22(3) (2000). The CMRS Providers have made no attempt to show that they would qualify under this provision.

Accordingly, the Commission should reject the CMRS Providers' claim that incumbent local exchange carriers must give them unbundled transport, rather than special access, to connect their switches to their cell sites.

Pursuant to Section 1.1206(a)(1) of the Commission's rules, and original and one copy of this letter are being submitted to the Office of the Secretary. Please associate this notification with the record in the proceeding indicated above. If you have any questions regarding this matter, please call me at (202) 515-2530.

Sincerely,



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Director - Regulatory Matters

⁵ CMRS carriers are generally not collocated in local exchange carrier offices.

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